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4 IN RE: PACIFIC FERTILITY CENTER
5 LITIGATION

6 Case No. 18-cv-01586-JSC

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15 **PROPOSED VERDICT FORM NO. 3**

16 We the jury answer the questions submitted to us as follows:

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21 **I. CHART'S AFFIRMATIVE DEFENSE: MISUSE OR MODIFICATION**

22 1. Was the Product misused or modified after it left Chart's possession?

23
24 ____ Yes ____ No

25
26 *If you answered yes to question 1, then answer question 2. If you answered no, skip*
27 *question 2 and go to question 3.*

28 2. Was the misuse or modification so highly extraordinary that it was not reasonably
foreseeable to Chart and therefore was the sole cause of Plaintiffs' harm?

29
30 ____ Yes ____ No

31
32 *If you answered no to question 2, then answer question 3. If you answered yes, stop*
33 *here, answer no further questions, and have the presiding juror sign and date this*
34 *form on the last page.*

1 **II. CLAIM 1: MANUFACTURING DEFECT**

2 3. Did Tank 4 contain a manufacturing defect when it left Chart's possession?

3 ____ Yes ____ No

4 *If your answer to question 3 is yes, answer question 4. If you answered no, do not answer*
5 *question 4 and go to question 5.*

6 4. Was the manufacturing defect a substantial factor in causing harm to Plaintiffs?

7 **Rosalynn Enfield:** ____ Yes ____ No

8 **Laura Parsell:** ____ Yes ____ No

9 **Kevin Parsell:** ____ Yes ____ No

10 **Chloe Poynton:** ____ Yes ____ No

11 **Adrienne Sletten:** ____ Yes ____ No

12 *Proceed to question 5.*

13

14 **III. DESIGN DEFECT**

15

16 **CLAIM 2: CONSUMER EXPECTATIONS TEST**

17

18 5. Did Tank 4 fail to perform as safely as an ordinary user of cryogenic storage tanks
19 would have expected when used or misused in an intended or reasonably foreseeable
20 way?

21 ____ Yes ____ No

22

23 *Regardless of your answer to question 5, proceed to question 6.*

1 **CLAIM 3: RISK BENEFIT TEST**

2 6. Did the benefits of the tank's design outweigh the risks of the design?

3 ____ Yes ____ No

4

5

6 • *If you answered yes to question 5 or no to question 6, answer question 7.*
7 • *If you answered no to question 5 and yes question 6, skip question 7 and proceed to
8 question 8.*

9 7. Was the tank's design a substantial factor in causing harm to plaintiffs?

10 **Rosalynn Enfield:** ____ Yes ____ No

11 **Laura Parsell:** ____ Yes ____ No

12 **Kevin Parsell:** ____ Yes ____ No

13 **Chloe Poynton:** ____ Yes ____ No

14 **Adrienne Sletten:** ____ Yes ____ No

15

16 *Proceed to question 8.*

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1 **IV. CLAIM 4: NEGLIGENT FAILURE TO RECALL OR RETROFIT**

2
3 8. Did Chart know or should it reasonably have known that Tank 4's controller was
4 dangerous or was likely to be dangerous when used in a reasonably foreseeable manner?

5 ____ Yes ____ No
6

7 *If your answer to question 8 is yes, then answer question 9. If you answered no, do not*
8 *answer questions 9 - 12 and go to question 13.*

9
10 9. Did Chart become aware of this defect after the tank was sold?

11 ____ Yes ____ No
12

13 *If your answer to question 9 is yes, then answer question 10. If you answered no, do not*
14 *answer questions 10 - 12 and go to question 13.*

15 10. Did Chart fail to recall or retrofit the tank's controller?

16 ____ Yes ____ No
17

18 *If your answer to question 10 is yes, then answer question 11. If you answered no, do*
19 *not answer questions 11 - 12 and go to question 13.*

20 11. Would a reasonable manufacturer under the same or similar circumstances have
21 recalled or retrofitted the tank's controller?

22
23 ____ Yes ____ No
24

25 *If your answer to question 11 is yes, then answer question 12. If you answered no,*
26 *do not answer question 12 and go to question 13.*

27 //
28 //

1 12. Was Chart's failure to recall or retrofit the tank's controller a substantial factor in
2 causing harm to plaintiffs?

3 **Rosalynn Enfield:** ____ Yes ____ No

4 **Laura Parsell:** ____ Yes ____ No

5 **Kevin Parsell:** ____ Yes ____ No

6 **Chloe Poynton:** ____ Yes ____ No

7 **Adrienne Sletten:** ____ Yes ____ No

9 *Proceed to next page*

1 **V. COMPENSATORY DAMAGES**

2 • *If you answered yes to any of questions 4, 7, or 12 (as to at least one*
3 *plaintiff), answer question 13 as to each plaintiff for whom you answered*
4 *yes in questions 4, 7, or 12.*

5 • *If you answered no to or skipped questions 4, 7, and 12 as to every plaintiff,*
6 *stop here, answer no further questions, and have the presiding juror sign*
7 *and date this form on the last page.*

8 13. What are each plaintiff's damages?

9 **Rosalynn Enfield:**

10 Economic loss

11 Value of damaged/lost eggs: \$ _____

12 Noneconomic loss

13 Pain, suffering, and emotional distress: \$_____

15 Rosalynn Enfield TOTAL \$ _____

17 **Laura & Kevin Parsell:**

18 Economic loss

19 Value of damaged/lost embryos: \$ _____

20 Noneconomic loss

21 Laura Parsell pain, suffering, and emotional distress: \$ _____

22 Kevin Parsell pain, suffering, and emotional distress: \$ _____

23 Laura & Kevin Parsell TOTAL \$ _____

25 **Chloe Poynton:**

26 Economic loss

27 Value of damaged/lost eggs: \$ _____

1 Noneconomic loss
2 Pain, suffering, and emotional distress: \$ _____
3

4 Chloe Poynton TOTAL \$ _____
5

6 **Adrienne Sletten:**
7

8 Economic loss
9

10 Value of damaged/lost eggs: \$ _____
11

12 Noneconomic loss
13

14 Pain, suffering, and emotional distress: \$ _____
15

16 Adrienne Sletten TOTAL \$ _____
17

18 *Proceed question 14.*
19

1 **VI. APPORTIONMENT OF FAULT**

2 3. 14. Was Pacific Fertility Center negligent with respect to Tank 4?

3 4. 5 ____ Yes ____ No

6 7 *If your answer to question 14 is yes, then answer question 15. If you answered no,*
insert the number zero next to Pacific Fertility Center in question 16.

8 9 10 15. Was Pacific Fertility Center's negligence a substantial factor in causing harm to the
plaintiffs?

11 12 ____ Yes ____ No

13 14 *If your answer to question 15 is yes, then answer question 16. If you answered no,*
insert the number zero next to Pacific Fertility Center in question 16.

15 16 17 16. What percentage of responsibility for the plaintiffs' harm do you assign to:

18 Chart: ____ %

19 Pacific Fertility Center: ____ %

20 TOTAL 100 %

23 24 25 23 *Proceed to the next question.*

1 Signed: _____ Presiding Juror

2
3 Dated: _____

4
5 After this verdict form has been signed, notify the clerk that you are ready to present your verdict
6 in the courtroom.